

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met her burden of proof to expand the acceptance of her claim to include additional thoracic and lumbar conditions as causally related to the accepted August 15, 2013 employment injury.

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances of the case as set forth in the prior Board decision are incorporated herein by reference. The relevant facts are as follows.

On August 15, 2013 appellant, then a 56-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that, on that date, she sustained a back sprain when attempting to lift a tub of mail off of a rack while in the performance of duty.

By decision dated October 8, 2013, OWCP denied appellant's claim.

Appellant subsequently submitted medical evidence. In progress notes dated October 15 and 22, 2013, Dr. Rahul V. Shah, a Board-certified orthopedic surgeon, noted that appellant was complaining of lumbar and thoracic pain and indicated an August 15, 2013 injury date. In progress notes dated October 15, 2013, he diagnosed thoracic and lumbar strains, left-sided T8-9 disc protrusion, and left-sided T8-9 radiculopathy, which he opined were employment related, and right-sided L3-4 stenosis of unknown causality. In an October 23, 2013 note, Dr. Shah detailed the history of appellant's August 15, 2013 injury. He attributed appellant's thoracic and lumbar sprains, T8-9 left-sided disc protrusion, and left-sided radiculopathy to the August 15, 2013 employment injury. Examination findings of the back included negative straight leg raising, femoral stretch tests, and spasm at the thoracic lumbar junction.

On October 28, 2013 appellant requested reconsideration and submitted additional evidence. Dr. Shah, in a progress note dated November 12, 2013, repeated appellant's history of injury and physical examination findings found in his prior reports. He diagnosed thoracic pain, sciatica, lumbago, employment-related thoracic and lumbar strains/sprains, left-sided T12 radiculopathy, and L3-4 right-sided stenosis of unknown origin.

By decision dated December 18, 2013, OWCP denied modification.

OWCP subsequently received a December 24, 2013 progress note from Dr. Shah, which reiterated appellant's history of injury and physical examination findings found in his prior reports. Dr. Shah diagnosed thoracic pain, sciatica, lumbago, employment-related thoracic and lumbar strains/sprains, left-sided T12 radiculopathy, and L3-4 right-sided stenosis of unknown origin.

On August 6, 2014 appellant requested reconsideration and submitted additional medical evidence. In a March 5, 2014 report, Dr. Shah noted that appellant was first seen on August 20, 2014 for the August 15, 2013 employment injury. He described how the employment incident

³ Docket No. 15-1524 (issued August 10, 2016).

occurred and the diagnoses provided by prior physicians. Based on the mechanism of injury and findings detailed in his report, Dr. Shah opined that the cause of appellant's injury was clearly due to bending and twisting while pulling a mail bin.

By decision dated February 17, 2015, OWCP denied modification of its prior decision.

On July 2, 2015 appellant appealed to the Board. By decision dated August 10, 2016, the Board set aside OWCP's February 17, 2015 decision, which found that appellant failed to establish that the August 15, 2013 incident occurred as alleged. The Board found that the weight of the factual evidence did in fact establish that the August 15, 2013 incident occurred as alleged. The Board remanded the case to OWCP to determine whether the medical opinion evidence established that the accepted employment incident caused an injury.⁴

By decision dated August 26, 2016, OWCP accepted the claim for thoracic and lumbar sprains. In a second decision dated August 26, 2016, it denied appellant's claim for the conditions of left-sided T8 and T9 disc protrusions, left-sided T8, T9, and T12 radiculopathy, L3-4 right-sided stenosis, and thoracic intervertebral disc displacement as not causally related to the accepted August 15, 2013 employment injury.

On September 9, 2016 OWCP received counsel's request for an oral hearing before an OWCP hearing representative, which was held on January 18, 2017.

Additional medical evidence was received. In a February 16, 2017 report, Dr. Shah detailed how the August 15, 2013 injury occurred, noted results from magnetic resonance imaging (MRI) scans, and detailed examination findings. He attributed the diagnoses of T8-9 disc protrusion, T8-9 radiculopathy, and right L3-4 disc protrusion to the accepted August 15, 2013 employment injury. In support of this conclusion, Dr. Shah observed that the mechanism of injury and appellant's history were consistent with the diagnoses and MRI scan findings.

By decision dated March 31, 2017, OWCP's hearing representative set aside OWCP's August 26, 2016 decision denying expansion of the acceptance of her claim. She found that medical evidence submitted subsequent to the August 26, 2016 decision was sufficient to warrant further development.

On May 24, 2017 OWCP referred appellant for a second opinion evaluation with Dr. Stanley Askin, a Board-certified orthopedic surgeon, to determine whether acceptance of the claim should be expanded to include additional claimed conditions.

In a report dated June 16, 2017, Dr. Askin, based upon a review of the medical evidence, statement of accepted facts (SOAF), and physical examination, noted thoracic and lumbar spine sprains as accepted conditions and diagnosed thoracic and lumbar spine degenerative disc disease. He noted that following the accepted August 15, 2013 employment injury appellant experienced several subsequent injuries. The injuries included a January 2014 slip and fall at home where she landed on her back, a February 2014 trip and fall where she injured her right shoulder and face, and a March 4, 2015 employment incident where she alleged a right knee injury after slipping on

⁴ *Id.*

ice. Dr. Askin related that a review of thoracic x-ray interpretations and MRI scan revealed T8-9 disc abnormality and a lumbar MRI scan revealed age-appropriate degenerative disc changes. Physical examination findings included left posterior rib cage pain, no tenderness to touch, full range of motion, negative Finkelstein test, and negative Phalen's and Tinel's signs. Dr. Askin opined that appellant had developed age-related degenerative back changes, which had not been caused by the accepted August 15, 2013 employment injury. He noted that her MRI scan findings did not indicate an acute trauma and opined that her preexisting thoracic and lumbar spine degenerative disc disease had not been aggravated by the August 15, 2013 employment injury. Rather, Dr. Askin found a temporary exacerbation of an underlying condition and that appellant's baseline was consistent with her age. He opined that she had reached maximum medical improvement and was capable of performing her regular employment duties.

By decision dated July 14, 2017, OWCP denied modification as it found the evidence insufficient to establish that the acceptance of appellant's claim should be expanded to include the additional claimed spinal conditions. It found the weight of the medical opinion evidence rested with Dr. Askin, OWCP's referral physician.

On July 19, 2017 appellant, through counsel, requested an oral hearing before an OWCP hearing representative. A video hearing was held on November 16, 2017.

By decision dated January 31, 2018, OWCP's hearing representative affirmed the denial of appellant's request to expand the acceptance of her claim to include additional spinal conditions. She found Dr. Askin's opinion constituted the weight of the medical opinion evidence.

LEGAL PRECEDENT

Where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.⁵ To establish causal relationship between the condition as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence supporting causal relationship.⁶ The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.⁷ Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the claimant's own belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.⁸

⁵ See *T.F.*, Docket No. 17-0645 (issued August 15, 2018); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

⁶ See *S.A.*, Docket No. 18-0399 (issued October 16, 2018); *Leslie C. Moore*, 52 ECAB 132 (2000).

⁷ *Id.*

⁸ *C.P.*, Docket No. 18-1645 (issued March 8, 2019); *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

ANALYSIS

The Board finds that appellant has not met her burden of proof to expand the acceptance of her claim to include additional thoracic and lumbar conditions causally related to the accepted August 15, 2013 employment injury.

In a June 16, 2017 report, Dr. Askin, a second opinion physician, reviewed the SOAF and the medical record. He noted her history, which included the August 15, 2013 employment injury, and subsequent injuries including a January 2014 slip and fall at home where she landed on her back, a February 2014 trip and fall where she injured her face and right shoulder, and a March 5, 2015 work incident where she alleged a right knee injury. Dr. Askin also noted appellant's current symptoms and provided essentially normal physical examination findings with the exception of left posterior rib cage pain. He attributed her degenerative changes to her age. Dr. Askin explained that appellant had preexisting thoracic and lumbar degenerative disc disease which symptoms had been temporarily exacerbated by the August 15, 2013 employment injury, but that her current baseline was consistent with her age. He concluded that she had reached maximum medical improvement and could return to her regular employment duties.

The Board finds that Dr. Askin's opinion represents the weight of the medical evidence with regard to appellant's request to expand acceptance of her claim to include the additional conditions of left-sided T8 and T9 disc protrusions, left-sided T8, T9, and T12 radiculopathy, L3-4 right-sided stenosis, and thoracic intervertebral disc displacement. Dr. Askin provided a detailed medical report reviewing appellant's history of injury and the medical evidence of record. He unequivocally opined that she did not have any additional thoracic or lumbar conditions caused or aggravated by the August 15, 2013 employment injury, and provided a well-reasoned medical explanation supporting his findings, but rather she had age-related degenerative back changes. Dr. Askin's opinion was based on an accurate medical history.⁹ The Board thus finds that his report constitutes the weight of the medical evidence.

The record also contains various progress reports and March 5, 2014 and February 16, 2017 from Dr. Shah in which he attributed appellant's T8-9 left-sided disc protrusion and left-sided T8-9 radiculopathy to the accepted August 15, 2013 employment injury. In a February 16, 2017 report, Dr. Shah explained that the diagnoses and MRI scan findings were consistent with appellant's history and mechanism of injury. The Board finds that, while he concluded that the August 15, 2013 employment injury caused the diagnosed thoracic and lumbar conditions, Dr. Shah has not provided sufficient medical rationale in support of his opinion. He has not explained how lifting a tub of mail off a track caused the condition, nor has he discussed the impact of injuries appellant sustained in 2014 and 2015. The opinion of a physician supporting causal relationship must rest on a complete factual and medical background supported by affirmative evidence, address the specific factual and medical evidence of record, and provide medical rationale explaining the relationship between the diagnosed condition and the established incident¹⁰ As Dr. Shah did not address all of the factual and medical evidence of record and did

⁹ A.C., Docket No. 16-1670 (issued April 6, 2018); *N.P.*, Docket No. 15-1580 (issued September 1, 2016); *see also Melvina Jackson*, 38 ECAB 443 (1987).

¹⁰ *See S.H.*, Docket No. 17-1660 (issued March 27, 2018); *see Lee R. Haywood*, 48 ECAB 145 (1996).

not provide sufficient medical explanation as to how appellant's diagnosed lumbar and thoracic conditions were causally related to the August 15, 2013 employment injury, his opinions are of limited probative value.¹¹

The Board thus finds that appellant has not met her burden of proof to establish that the acceptance of the claim should be expanded to include additional conditions.

On appeal, counsel contends that Dr. Shah, in his February 16, 2017 report, sufficiently explained how the thoracic and lumbar condition had been caused by the accepted August 15, 2013 employment injury, while Dr. Askin failed to provide supporting rationale for his conclusion. He argues that Dr. Shah's February 16, 2017 report therefore represents the weight of the evidence, or alternatively, creates a conflict in the medical opinion evidence regarding whether appellant sustained additional lumbar and thoracic conditions as a result of her August 15, 2013 employment injury. As found above, however, Dr. Askin's opinion that appellant did not sustain further thoracic lumbar conditions as a result of her accepted employment injury was sufficiently rationalized and represented the weight of the medical opinion evidence.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met her burden of proof to expand the acceptance of her claim to include additional thoracic and lumbar conditions causally related to the August 15, 2013 employment injury.

¹¹ S.A., Docket No. 09-2339 (issued July 22, 2010).

ORDER

IT IS HEREBY ORDERED THAT the January 31, 2018 decision of Office of Workers' Compensation Programs is affirmed.

Issued: April 15, 2019
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board